

112TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
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ENERGY TAX PREVENTION ACT OF 2011

~~MARCH~~ ^{APRIL 1}, 2011.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. UPTON, from the Committee on Energy and Commerce,
submitted the following

R E P O R T

together with

~~MINORITY~~ ^{Dissenting} VIEWS

[To accompany H.R. 910]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 910) to amend the Clean Air Act to prohibit the Administrator of the Environmental Protection Agency from promulgating any regulation concerning, taking action relating to, or taking into consideration the emission of a greenhouse gas to address climate change, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Energy Tax Prevention Act of 2011”.

SEC. 2. NO REGULATION OF EMISSIONS OF GREENHOUSE GASES.

Title III of the Clean Air Act (42 U.S.C. 7601 et seq.) is amended by adding at the end the following:

“SEC. 330. NO REGULATION OF EMISSIONS OF GREENHOUSE GASES.

“(a) DEFINITION.—In this section, the term ‘greenhouse gas’ means any of the following:

- “(1) Water vapor.
- “(2) Carbon dioxide.
- “(3) Methane.
- “(4) Nitrous oxide.
- “(5) Sulfur hexafluoride.

"(6) Hydrofluorocarbons.

"(7) Perfluorocarbons.

"(8) Any other substance subject to, or proposed to be subject to, regulation, action, or consideration under this Act to address climate change.

"(b) LIMITATION ON AGENCY ACTION.—

"(1) LIMITATION.—

"(A) IN GENERAL.—The Administrator may not, under this Act, promulgate any regulation concerning, take action relating to, or take into consideration the emission of a greenhouse gas to address climate change.

"(B) AIR POLLUTANT DEFINITION.—The definition of the term 'air pollutant' in section 302(g) does not include a greenhouse gas. Notwithstanding the previous sentence, such definition may include a greenhouse gas for purposes of addressing concerns other than climate change.

"(2) EXCEPTIONS.—Paragraph (1) does not prohibit the following:

"(A) Notwithstanding paragraph (4)(B), implementation and enforcement of the rule entitled 'Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards' (as published at 75 Fed. Reg. 25324 (May 7, 2010) and without further revision) and finalization, implementation, enforcement, and revision of the proposed rule entitled 'Greenhouse Gas Emissions Standards and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles' published at 75 Fed. Reg. 74152 (November 30, 2010).

"(B) Implementation and enforcement of section 211(o).

"(C) Statutorily authorized Federal research, development, and demonstration programs addressing climate change.

"(D) Implementation and enforcement of title VI to the extent such implementation or enforcement only involves one or more class I substances or class II substances (as such terms are defined in section 601).

"(E) Implementation and enforcement of section 821 (42 U.S.C. 7651k note) of Public Law 101-549 (commonly referred to as the 'Clean Air Act Amendments of 1990').

"(3) INAPPLICABILITY OF PROVISIONS.—Nothing listed in paragraph (2) shall cause a greenhouse gas to be subject to part C of title I (relating to prevention of significant deterioration of air quality) or considered an air pollutant for purposes of title V (relating to permits).

"(4) CERTAIN PRIOR AGENCY ACTIONS.—The following rules and actions (including any supplement or revision to such rules and actions) are repealed and shall have no legal effect:

"(A) 'Mandatory Reporting of Greenhouse Gases', published at 74 Fed. Reg. 56260 (October 30, 2009).

"(B) 'Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act', published at 74 Fed. Reg. 66496 (December 15, 2009).

"(C) 'Reconsideration of Interpretation of Regulations That Determine Pollutants Covered by Clean Air Act Permitting Programs', published at 75 Fed. Reg. 17004 (April 2, 2010) and the memorandum from Stephen L. Johnson, Environmental Protection Agency (EPA) Administrator, to EPA Regional Administrators, concerning 'EPA's Interpretation of Regulations that Determine Pollutants Covered by Federal Prevention of Significant Deterioration (PSD) Permit Program' (December 18, 2008).

"(D) 'Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule', published at 75 Fed. Reg. 31514 (June 3, 2010).

"(E) 'Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call', published at 75 Fed. Reg. 77698 (December 13, 2010).

"(F) 'Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Failure To Submit State Implementation Plan Revisions Required for Greenhouse Gases', published at 75 Fed. Reg. 81874 (December 29, 2010).

"(G) 'Action to Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan', published at 75 Fed. Reg. 82246 (December 30, 2010).

"(H) 'Action to Ensure Authority to Implement Title V Permitting Programs Under the Greenhouse Gas Tailoring Rule', published at 75 Fed. Reg. 82254 (December 30, 2010).

"(I) 'Determinations Concerning Need for Error Correction, Partial Approval and Partial Disapproval, and Federal Implementation Plan Regarding Texas Prevention of Significant Deterioration Program', published at 75 Fed. Reg. 82430 (December 30, 2010).

"(J) 'Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting Sources in State Implementation Plans', published at 75 Fed. Reg. 82536 (December 30, 2010).

"(K) 'Determinations Concerning Need for Error Correction, Partial Approval and Partial Disapproval, and Federal Implementation Plan Regarding Texas Prevention of Significant Deterioration Program; Proposed Rule', published at 75 Fed. Reg. 82365 (December 30, 2010).

"(L) Except for actions listed in paragraph (2), any other Federal action under this Act occurring before the date of enactment of this section that applies a stationary source permitting requirement or an emissions standard for a greenhouse gas to address climate change.

"(5) STATE ACTION.—

"(A) **NO LIMITATION.**—This section does not limit or otherwise affect the authority of a State to adopt, amend, enforce, or repeal State laws and regulations pertaining to the emission of a greenhouse gas.

"(B) EXCEPTION.—

"(i) **RULE.**—Notwithstanding subparagraph (A), any provision described in clause (ii)—

"(I) is not federally enforceable;

"(II) is not deemed to be a part of Federal law; and

"(III) is deemed to be stricken from the plan described in clause (ii)(I) or the program or permit described in clause (ii)(II), as applicable.

"(ii) **PROVISION DEFINED.**—For purposes of clause (i), the term 'provision' means any provision that—

"(I) is contained in a State implementation plan under section 110 and authorizes or requires a limitation on, or imposes a permit requirement for, the emission of a greenhouse gas to address climate change; or

"(II) is part of an operating permit program under title V, or a permit issued pursuant to title V, and authorizes or requires a limitation on the emission of a greenhouse gas to address climate change.

"(C) **ACTION BY ADMINISTRATOR.**—The Administrator may not approve or make federally enforceable any provision described in subparagraph (B)(ii)."

SEC. 3. PRESERVING ONE NATIONAL STANDARD FOR AUTOMOBILES.

Section 209(b) of the Clean Air Act (42 U.S.C. 7543) is amended by adding at the end the following:

"(4) With respect to standards for emissions of greenhouse gases (as defined in section 330) for model year 2017 or any subsequent model year new motor vehicles and new motor vehicle engines—

"(A) the Administrator may not waive application of subsection (a); and

"(B) no waiver granted prior to the date of enactment of this paragraph may be construed to waive the application of subsection (a)."

SEC. 4. SENSE OF CONGRESS.

It is the sense of the Congress that—

(1) there is established scientific concern over warming of the climate system based upon evidence from observations of increases in global average air and ocean temperatures, widespread melting of snow and ice, and rising global average sea level;

(2) addressing climate change is an international issue, involving complex scientific and economic considerations;

(3) the United States has a role to play in resolving global climate change matters on an international basis; and

(4) Congress should fulfill that role by developing policies that do not adversely affect the American economy, energy supplies, and employment.

ENERGY TAX PREVENTION ACT OF 2011

April 1, 2011 - _ Ordered to be printed

Mr. UPTON, from the Committee on Energy and Commerce, submitted the following

REPORT

Together with

DISSENTING VIEWS

To accompany H.R. 910

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 910) to clarify that the Administrator of the Environmental Protection Agency does not have authority under the Clean Air Act to promulgate any regulation concerning, take action relating to, or take into consideration the emission of a greenhouse gas to address climate change, and for other purposes.

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AMENDMENT

The amendment is as follows:

[INSERT BILL TEXT PREPARED BY LEG COUNSEL]

PURPOSE AND SUMMARY

H.R. 910, the “Energy Tax Prevention Act of 2011” was introduced by Rep. Fred Upton (together with Reps. Barton, Boren, McKinley, McMorris Rogers, Peterson, Rahall, Sullivan, Walden and Whitfield) on March 3, 2011. The legislation prevents the Environmental Protection Agency (EPA) from using the Clean Air Act (CAA) to implement its global warming regulatory agenda, thereby avoiding the resultant energy cost increases, job losses, and overall economic damage. The regulations have begun to go into effect, with numerous additional rulemakings pending or expected, and the potential adverse consequences to gasoline and electricity prices, household incomes, costs of goods and services, global competitiveness and employment are likely to increase considerably unless the agency’s lack of authority under the CAA is clarified.

Key provisions in the bill:

- Expressly preclude the Administrator of EPA from promulgating any rules regulating greenhouse gases under the CAA to address climate change, subject to limited exceptions, and clarify that greenhouse gases are not air pollutants under the statute.

- Repeal existing CAA greenhouse gas climate change rules and programs, including the EPA Administrator's endangerment finding and regulation of greenhouse gases emissions from stationary sources under the CAA's Prevention of Significant Deterioration (PSD) preconstruction and Title V operating permit programs.
- Allow states to undertake climate change policies, but voids, as a matter of federal law, requirements for states to regulate greenhouse gases under their PSD and Title V operating permit programs.
- Provide exceptions for light-duty motor vehicle regulations scheduled to take effect for Model Years 2012 through 2016 and proposed medium and heavy-duty vehicle provisions for Model Years 2014 through 2018, implementation of the renewable fuels mandate under CAA Section 211(o), federally authorized climate change research, utility industry greenhouse gas reporting requirements, and implementation of the stratospheric ozone provisions under Title VI of the CAA.

BACKGROUND AND NEED FOR LEGISLATION

America faces rising gasoline and other energy costs, a weak and nearly-jobless economic recovery, and intense global competition threatening to further erode the domestic manufacturing and industrial sectors. Yet the EPA is moving aggressively to implement a global warming agenda that is almost certain to be the most far-reaching, costly and complicated set of regulations in the agency's history. Though premised by EPA on the Supreme Court's 5 to 4 decision in *Massachusetts v. Environmental Protection Agency*, 549 U.S. 497 (2007), the agency's regulations are by no means mandated by that Supreme Court decision. The Supreme Court Majority interpreted Congressional intent behind the 1970 CAA and subsequent amendments, and inferred that greenhouse gases could fit with the statute's definition of "air pollutant"; however the Supreme Court did not require EPA to make an endangerment finding

for greenhouse gases or proceed with its global warming regulations. Rather, EPA was directed to ground its reasons for action *or inaction* in the CAA.

In contrast, Congress has debated global warming directly on numerous occasions, and has repeatedly rejected legislative measures that in some respects were less sweeping than EPA's regulations. In the previous debates over global warming legislation, and most recently the American Clean Energy and Security Act of 2009, Congress has created a record regarding the science and economics of global warming policy that is highly relevant to the debate over the merits of EPA's efforts to implement the regulatory equivalent. Three hearings listed below relating to H.R. 910 further strengthen the conclusion that EPA's greenhouse gas regulations under the CAA would be an extremely costly and ineffective means of addressing climate change. Regardless, EPA is moving expeditiously to promulgate its regulatory scheme.

The initial greenhouse gas regulations have begun to be issued by the EPA. As the first step, in December 2009, the Administrator of EPA issued an "endangerment finding" concluding that the atmospheric concentrations of the combination of carbon dioxide and five other greenhouse gases endanger public health and welfare, and those emissions of such greenhouse gases from motor vehicles are contributing to such concentrations and hence endangering public health and welfare. Subsequently, EPA moved forward with greenhouse emissions standards from motor vehicles, including its "Light Duty Vehicle" rule which sets greenhouse gas emissions standards for passenger cars and trucks for Model Years 2012-2016 and went into effect on January 2, 2011, with estimated compliance costs of \$52 billion. EPA has also proposed greenhouse gas and fuel economy standards for medium and heavy duty vehicles for Model Years 2014-2018, with estimated compliance costs of \$7.7 billion. EPA has advised that it is considering actions to reduce greenhouse emissions from other transportation sources.

EPA contends that, once it began regulating greenhouse gas emissions from vehicles, there was an automatic statutory trigger requiring it to begin regulating such emissions for

stationary sources under two CAA permitting programs. These programs are known as the Prevention of Significant Deterioration (PSD) preconstruction permit program, and the Title V operating permit program. These are permits that regulated entities must get when they make a major modification or build new projects. EPA estimates that prior to its new global warming rules, only 280 sources were required annually to obtain PSD permits, and that nationwide there are approximately 15,000 sources that currently have Title V operating permits. EPA concluded, however, that once the agency began regulating greenhouse gas emissions from motor vehicles on Jan. 2, 2011, (i) 82,000 sources would need PSD permits and to install “Best Available Control Technology” or “BACT” (determined on a case by case basis); and (ii) 6.1 million sources would need to obtain Title V permits.

EPA itself called this potential regulatory result “absurd” and said it would lead to a gridlocking of the permit system, as permitting authorities would be swamped with permit applications and permitting would come to a halt for both large and small sources. Without permits, facilities cannot construct or modify, with potentially devastating economic consequences.

In May 2010, EPA issued its so-called “Tailoring Rule” pursuant to which EPA raised the CAA statutory thresholds to require permitting initially only for the largest industrial sources of greenhouse gas emissions from 100/250 tons to 100,000 tons per year. In essence, EPA replaced the thresholds that Congress itself established with much higher thresholds. EPA has “tailored” the CAA permitting requirements to initially cover large industrial facilities it projects represent 70% of all U.S. greenhouse gas emissions (*e.g.*, power plants, large boilers, pulp and paper, cement, iron and steel, refineries and nitric acid plants). EPA plans to initially limit permitting requirements to 1,600 PSD permits annually and 15,550 operating permits. EPA estimates the costs of this permitting avoided by the Tailoring Rule are \$78 billion annually.

EPA, however, has already scheduled other rulemakings to address phasing in permitting for smaller sources, including rulemakings to be completed in 2012 and 2016.

There has been a great deal of discussion about whether EPA has the legal authority to “tailor” numerical thresholds established by Congress in this fashion and several causes of action have been filed challenging EPA’s actions.

The first PSD permitting requirements for large industrial facilities became effective in January 2011 and the first Title V permit requirements will go into effect in July 2011. To comply with the permitting requirements, EPA, has issued BACT Guidance which indicates BACT may mean efficiency measures, carbon capture and storage (CCS) technologies (which as a practical matter are not commercially deployed and not expected to be for years), and leaves open to states whether or not they may require fuel switching to reduce greenhouse gas emissions.

In addition to PSD and Title V permitting, in the past EPA has outlined an array of possible additional greenhouse gas related rulemakings under the CAA. For example, in December 2010, EPA announced it plans to set new greenhouse gas “New Source Performance Standards” specifically for existing petroleum refineries and fossil fired power plants. EPA has also previously advised that the agency is also considering petitions or requests to regulate such emissions from cement plants, nitric acid plants, utility boilers, oil and gas production, landfills, and concentrated animal feeding operations.

In October 2009, EPA also issued mandatory greenhouse gas reporting rules pursuant to the CAA and appropriations legislation (FY 2008 Consolidated Appropriations Act, H.R. 2764, Pub. L. 110-161). EPA estimated the costs of the initial rule to be \$132 million in the first year, and \$89 million annually. EPA estimated that over 10,000 facilities in the U.S. would be covered by the rules and would have to begin annual reporting requirements. Since October 2009, EPA has supplemented the reporting rule four times to add more sources.

H.R. 910 would prevent these EPA's expansive regulations of stationary sources from being implemented by the agency, and circumventing Congressional intent. It would also return global warming policymaking responsibility where it belongs – Congress.

ECONOMIC JUSTIFICATION

EPA's global warming regulations under the CAA seem almost tailor-made to exacerbate the very economic problems the nation now faces. The Subcommittee on Energy and Power held two hearings that included discussion regarding the economic implications of the agency's agenda. The hearings echoed those of past legislative debates over cap and trade energy taxes in detailing the adverse impact of such measures on energy prices and employment as well as the likelihood that the high costs would not be justified by any demonstrable climate change reduction benefits.

Energy Costs

Fossil fuels – coal, oil, and natural gas – provide this nation with 85 percent of its energy. They are widely used because of their availability, reliability and affordability. There is no question that low-cost energy is the lifeblood of a strong and free economy – empowering in both the figurative and literal sense. America's fossil fuel-based energy supplies already face the world's most stringent regulations, including numerous air pollution measures under the CAA. Now, EPA is beginning the process of rolling out a set of new ones based on addressing carbon dioxide and other greenhouse gas emissions. It is nothing short of a dramatic transformation of the American economy via what amounts to a massive energy tax.

Motor fuels are among the impacted energy sources. As it is, the price of gasoline has nearly doubled since the beginning of 2009. Although still slightly below the \$4.00 per gallon levels reached in the summer of 2008, today's high prices are particularly challenging given that

many households are struggling in the current economy. While exogenous events, namely unrest in North Africa and the Middle East, are a significant factor in rising oil and motor fuels prices, federal laws and regulations have long been a contributor as well. For example, the U.S. remains the only nation in the world that places substantial domestic oil supplies off limits. With additional domestic production, prices would be lower and vulnerability to geopolitical events would be reduced. In addition to oil production constraints, a long list of regulations imposed on domestic refiners add to the cost of turning oil into gasoline and diesel fuel.

Rather than revisiting these costly existing restrictions with an eye towards modifications that would ease future pain at the pump, the Obama administration continues adding to the burden with its global warming agenda. These regulations apply to domestic refineries and may also add further roadblocks to domestic oil production. For example, domestic refiners and producers will come under the PSD and Title V permitting programs for greenhouse gases. In addition, on December 23, 2010, EPA announced that it will propose New Source Performance Standards (NSPS) for such emissions from refiners which will apply to existing as well as new sources. EPA has not conducted any economic analysis of what these stationary source GHG rules might cost.

The domestic refining sector has raised concerns about the impact on the cost of producing motor fuels. On February 9, 2011, the Subcommittee received testimony from the Vice President of Lion Oil, an Arkansas refiner, who testified that a major refinery expansion project at his company had been put on hold, and that “the uncertainty and potentially prohibitive costs associated with possible cap-and-trade legislation and EPA’s greenhouse gas regulations were a critical factor leading us to delay the completion of the expansion.” With regard to the ultimate impact of EPA’s new regulations on retail prices, he stated that “[H.R. 910] is also necessary to protect consumers, farmers, and truckers from higher gasoline and diesel fuel prices.” When asked what EPA regulations he was most concerned about, he acknowledged

that his industry faces many, but that “the PSD and the NSPS portions of the greenhouse gas regulations are the most immediate concern.”

Similar concerns were also raised in letters of support for H.R. 910 from the National Petrochemical and Refiners Association (NPRA) and individual companies. The President of NPRA stated that “[s]ome of our members have been forced to stop expansion projects that would have increased our domestic petrochemical and fuel supply” because of EPA’s greenhouse gas agenda, which he believes would “raise consumer fuel costs further by restricting our domestic energy production.” A representative of one of the nation’s large refining companies, Valero, stated that “every credible economic analysis that has been performed shows that Americans will pay higher prices at the pump ... as a direct result of EPA’s action.”

EPA Administrator Lisa Jackson has countered that EPA regulations may reduce fuel costs and dependence on foreign oil as a consequence of fuel savings under the new motor vehicle fuel efficiency standards, which were the first greenhouse gas regulations to be promulgated by the agency. However, H.R. 910 explicitly exempts these new light duty fuel efficiency standards, which the Administration agreed in 2009 to promulgate pursuant to an agreement between EPA, the National Highway Traffic Safety Administration (NHTSA) and the State of California. Under H.R. 910, these provisions, which are applicable to Model Years 2012 through 2016, will still go into force as planned, as will EPA’s proposed standards for medium and heavy duty engines and vehicles for Model Years 2014 through 2018. Thus, any energy savings from these new standards are preserved by H.R. 910.

For 2017 and afterwards, H.R. 910 prevents EPA and California from setting its own further standards for greenhouse gas tailpipe emissions under the CAA, restoring sole authority for fuel economy regulations with NHTSA where it has resided since the 1975 Energy Policy and Conservation Act. NHTSA can strengthen fuel economy standards for 2017 and beyond if it believes doing so is in the public interest, and Congress can also direct stringent standards.

According to an analysis conducted for the National Black Chamber of Commerce by Charles River Associates, the American Energy and Security Act of 2009 was estimated to increase gasoline prices by 19 cents per gallon by 2015 and 95 cents by 2050 – above and beyond anything else that may impact prices in the years ahead. While EPA has provided very few details regarding what their full greenhouse gas regulatory requirements will ultimately entail, it is unlikely that the agency would be satisfied with anything less stringent than the unsuccessful legislation the regulations are attempting to replace. Indeed, during the debate over climate legislation in 2009 and 2010, Administrator Jackson warned of higher costs associated with regulations in order to urge Congress to enact legislation as the preferred alternative. When asked by Rep. John Dingell, during an April 22, 2009 Committee on Energy and Commerce hearing on the American Energy and Security Act, whether regulating greenhouse gases under the Clean Air Act would result in a “glorious mess,” Administrator Jackson replied that “if your point, sir, is that it is more efficient to do it via a bill, via new legislation like this discussion draft envisions, then I couldn’t agree more.”

Beyond motor fuels, EPA’s greenhouse gas regulations also threaten to raise electricity costs. Coal is used to generate half of America’s electricity, and it is also the energy source most heavily targeted under EPA’s greenhouse gas regulatory scheme. Electric utilities, manufacturers who rely on affordable coal-fired generation to compete globally, and the operators of coal mines who supply this energy source all testified in favor of H.R. 910. The President and CEO of South Carolina electricity provider Santee Cooper testified at the February 9th hearing that EPA’s greenhouse gas regulations, along with others, threaten “premature shutdown of significant amounts of the existing U.S. coal fleet; increases in electricity prices; risks to electric reliability; job losses; and harm to the U.S. economy.” He added that the cost of natural gas fired electricity, responsible for nearly 20 percent of generation, would rise as well. At a March 1, 2011 hearing, the President of the Ohio Coal Association stated that “[a]llowing

the USEPA to regulate greenhouse gases will increase the cost to power our Country, cause massive transfers of wealth, and result in huge job losses that will not be recovered.”

As with gasoline prices, the full impact on electricity prices cannot be accurately predicted until EPA better explains what its greenhouse gas agenda would require. A Vice President of Charles River Associates testified on March 1st that all pending EPA regulations “could increase real (i.e. before inflation) wholesale electricity prices by 35 – 40% from 2015 onward. Most of this impact is attributable to the greenhouse gas regulations.”

High energy costs disproportionately burden low income households and the smallest of businesses. The President and CEO of the National Black Chamber of Commerce noted at the February 9th hearing that “[w]hile paying a higher heating bill this month or doling out money for gasoline on the way into the office from McLean or Bethesda may mean little to government bureaucrats, people living paycheck to paycheck and small businesses trying to get by simply cannot afford it, especially now.”

Jobs

Unemployment remains persistently high, and the American people are demanding policies that will get the nation back to work. But the record also makes clear that greenhouse gas regulations reduce rather than create domestic jobs.

As discussed previously, EPA’s regulations would raise gasoline and electricity costs, harming both consumers and businesses. But energy is only part of the higher costs EPA’s agenda would impose on America’s job creators. The costs of compliance with these new requirements will also be substantial, though hard to quantify since the agency has yet to inform the regulated community what technologies would pass muster. Further, the uncertainty raised by this as-yet-unspecified regulatory scheme is already having a chilling effect on plant expansions and other job-creating investments. Worse, given the backdrop of intense global competition in

the manufacturing sector, these unilateral EPA regulations mean that jobs will migrate to nations like China, India, and others who have made clear that they have no plans to impose similar global warming measures on their industries.

The breadth of the impact is staggering. At the February 9th and March 1st hearings, the Subcommittee heard from a broad cross section of sectors - manufacturers, energy producers, small businesses, farmers - testifying against EPA's global warming regulations. Subsequently, a large number of trade associations, representing a significant percentage of private sector employment, have come out in support of H.R. 910. This includes the American Forest and Paper Association, American Electric Power, American Iron and Steel Institute, American Public Power Association, Business Roundtable, Fertilizer Institute, Industrial Energy Consumers of America, Metalcasters Alliance, National Association of Realtors, National Cattlemen's Beef Association, National Petrochemical and Refiners Association, American Farm Bureau Federation, U.S. Chamber of Commerce, National Association of Manufacturers, National Mining Association, and the National Rural Electric Cooperative Association.

The effects of EPA's regulations are potentially felt most acutely by manufacturers and by energy intensive and trade exposed industries competing in a global marketplace. In some instances, facility expansions have already been delayed as is occurring with the Lion Oil's Arkansas refinery expansion project. Their representative noted that "at the same time construction jobs were being terminated in El Dorado, Arkansas, in India, more than 75,000 workers were embarking on a 3-year project to build a brand-new state-of-the-art refinery ... designed purely for export purposes." Other projects have been scaled back considerably as is the case with a Nucor Corporation steel facility in Louisiana. The General Manager of Environmental Affairs at Nucor stated at a February 9th hearing that the original project "was around 1,000 jobs when the full project was in, and we are around 150 jobs right now. And there

was about 2,000 construction jobs originally and we are at about 500 construction jobs right now....”

Rather than provide regulatory certainty, EPA’s ill-defined regulatory rollout is creating uncertainty and stifling investment. The President of the Industrial Energy Consumers of America stated on March 1st that “[t]he EPA greenhouse gas regulation is an example of regulation that creates uncertainty and discourages investment and when added to the many other new regulations it is understandable why corporate America is sitting on \$2 trillion of cash.” Many believe EPA’s GHG policies are a contributor to the slow economic recovery and lingering high unemployment.

Not only are these policies bad for the American economy and domestic jobs, but they do little to reduce greenhouse gas emissions. EPA’s rules will chase manufacturing activity to nations that often have higher greenhouse gas emissions per unit output (sometimes referred to as “carbon leakage”). Nucor said that “the U.S. steel industry has the lowest CO2 emissions per ton in the world,” and that “these very regulations and practices that are intended to improve the environment actually result in increased global emissions and more environmental impact than if the industry had remained in the United States.” The Manufacturing Director for chemical producer FMC similarly testified that “[t]he current U.S. approach to regulating greenhouse gases not only fails to incentivize us to achieve greater efficiency, but over time it may lead to U.S. natural soda ash producers to lose business to our off-shore rivals, mainly the Chinese, who produce their soda ash synthetically. Synthetic soda ash generates an average of 30 percent greater greenhouse gas emissions per ton than does soda ash mined from natural resources.” In sum, there is little if any environmental gain to justify the economic pain.

Administrator Jackson suggested that small businesses are not harmed by EPA’s greenhouse gas rules because the so-called Tailoring Rule prevents direct regulation of them, at least at the outset. However, small business, just like homeowners and car owners, will face

higher energy costs as a consequence of the burdens imposed on utilities and refineries. Indeed, despite a large number of pending regulations, the President and CEO of the National Black Chamber of Commerce, who also sits on the Board of the U.S. Chamber of Commerce, singled out EPA's greenhouse gas measures as the top concern of the small business community. A representative of James River Air Conditioning, who testified on behalf of the National Federation of Independent Business (NFIB) on March 1st, added that many small businesses are contractors for large construction projects that are being discouraged by EPA's agenda. Further, he and other small business owners find little comfort in the Tailoring Rule, as "it would merely temporarily delay inevitable and onerous permitting requirements."

Similar claims that agricultural jobs are unaffected are also misleading. The President of the Illinois Farm Bureau who testified on behalf of the American Farm Bureau on February 9th, warned that "farmers and ranchers receive a double economic jolt," from these regulations. He explained that "even if this 'tailoring' approach were to survive, farmers and ranchers would still incur the higher costs of compliance passed down from utilities, refiners and fertilizer manufacturers that are directly regulated as of January 2, 2011." In addition, he was also wary of EPA's so-called Tailoring Rule, testifying that if the Tailoring Rule fails to withstand legal challenge, "[f]or the first time, many farm and ranch operations will likely be subject to direct new source review/prevention of significant deterioration construction permits and Title V permit requirements under the Clean Air Act."

The Senior Vice President and Chief Economist for the American Council for Capital Formation testified on February 9th about the overall impact of EPA's rules on the American economy. She stated that the uncertainty created by these rules has discouraged the investment necessary for a robust recovery and job growth, and estimates that "in 2014 there would be an economy wide job loss of 476,000 to 1,400,000 when direct, indirect, and induced effects are included." She added that these are net job losses, after any so-called green jobs are taken into

account. The last point was reinforced by a representative of Charles Rivers Associates on March 1st. When asked about the green jobs, he conceded that firms coming under EPA's global warming regulations would have to employ people in order to comply with the new requirements, and would raise employment amongst companies that make pollution control equipment or produce carbon-free energy. However, these policies greatly increase energy and other operating costs, which destroy far more jobs in the process. He concludes that "EPA's new regulations will create losses throughout the economy that more than offset any gains for specific industries that receive new orders because of EPA regulations." Indeed, this appears to be happening already.

Costs Versus Benefits

The debate over H.R 910 is not a debate about the science of climate change, but rather about whether EPA regulation of greenhouse gases under the CAA is a sensible solution or not. It clearly is not the appropriate vehicle.

Those skeptical of the claim that global warming is a dire crisis are particularly concerned by the staggering costs of EPA's global warming regulations. But it is not necessary to be a climate change skeptic to be a skeptic of EPA's regulatory agenda, as this agenda would not make an appreciable difference in either the atmospheric concentrations of carbon dioxide and other greenhouse gases or the earth's future temperature.

As discussed previously, the unilateral nature of EPA's actions, amidst the backdrop of developing world emissions that already surpass America's emissions and are growing at a rate many times faster, raise serious doubts as to the efficacy of the agency's regulatory scheme. Further, the fact that American manufacturing activity would likely be outsourced to nations with higher emissions per unit output raises the possibility that the rules may prove environmentally counterproductive.

China alone out-emits the United States, and its emissions growth is projected by the Energy Information Administration to be several times higher than America's through 2030. At the February 9th hearing, EPA Administrator Jackson confirmed, as she did at previous cap and trade hearings, that unilateral action would be nearly meaningless, conceding that "we will not ultimately be able to change the amount of CO₂ that is accumulating in the atmosphere alone...." She suggested that EPA should move ahead nevertheless in the hope that other nations would follow the lead of the United States. Indeed, at a March 8th Subcommittee hearing entitled "Climate Science and EPA's Greenhouse Gas Regulations," scientists and public health experts raised doubts that EPA's agenda would make a measurable difference, either in emissions, future temperatures, or the claimed environmental and public health impacts. When questioned about the impact of EPA's regulations, the Director of the Earth System Science Center at the University of Alabama in Huntsville stated that "[I] have done several calculations in that regard and the impact is miniscule to whatever – really both the greenhouse gas concentration total and what the climate system might do as a result of that delta."

In some cases, the predicted harm from global warming may be outweighed by the harm from EPA's global warming regulations – a cure potentially worse than the disease. For example, in response to assertions that continued warming would harm corn yields, this witness, who is also Alabama's State Climatologist, noted that "[w]e grow corn from North Dakota to Alabama. When it is warm in Alabama, we still get 240 bushels an acre for irrigated corn, a tremendous amount of corn. The temperature is not as critical when you know how to farm and deal with the variations that occur in a particular area. But I can assure you, because I talk to a lot of farmers and deal with them, that their fuel costs, their fertilizer costs, they are complaining a lot right now and just cannot bear to see those costs go up any more which would happen if a price were put on carbon like that."

With regard to claims that EPA's rule would improve public health, the Professor Emeritus of Tropical Public Health at the Uniformed Services University of the Health Sciences stated that "[l]et us disabuse ourselves of the idea, if it is out there, that EPA controlling CO₂ will improve health outcomes in the US or elsewhere." Indeed, he expressed strong concerns about the public health implications brought on by EPA's costly agenda. He stated that "with greater EPA control over CO₂, it is likely that economic growth will suffer and we will be poorer as a nation. I have observed in my many years of scientific research, in both rich and poor countries, the rich countries can afford to deal with public health problems." EPA confirmed the high costs relative to reductions in temperature in only regulatory impact analysis of its the light duty vehicle rule. In its analysis, EPA concluded that the rule would impose compliance costs of nearly \$52 billion dollars but would only reduce the earth's future temperature by an estimated 0.006 to 0.015 degrees Celsius (no more than 0.027 degrees Fahrenheit) by 2100. Sea level rise was expected to be reduced by 0.06 to 0.14 cm (no more than 0.055 inches) by 2100. If this ratio of costs to benefits applies to the rest of EPA's regulations, the agency may well be embarking on a trillion dollar agenda in order to make a difference in the earth's future temperature of, at most, one or two tenths of a degree Fahrenheit by 2100 and a comparably trivial difference in sea level rise – quite possibly the worst deal ever presented to the American people.

Restoring the Role of Congress in Setting Climate Policy

Rather than serving as a departure from the longstanding Congressional position on climate change, H.R. 910 restores it. Greenhouse gas emissions controls under the Clean Air Act have in the past been considered and rejected by Congress. The many issues now emerging from EPA's greenhouse gas regulatory agenda confirm that Congress' reluctance was well founded.

Given the sweeping consequences of this agenda on the American people, it is clear that global warming policy decisions should be directed by Congress and not a federal agency. That is what H.R. 910 seeks to accomplish.

Notwithstanding the Supreme Court's decision in *Massachusetts v. EPA*, the language of the CAA argues against its use as a tool to address global warming. Although the CAA specifically expressly identifies a large number of air pollutants and details how they will be regulated, the statute contains no direct authority for the agency to regulate carbon dioxide or other greenhouse gases. In the debate over the 1990 amendments to the CAA (the last major amendments to this statute), two significant global warming provisions were included in the Senate-passed version, S. 1630. However, these provisions were taken out of the bill that ultimately passed.

The existing provisions now being applied to carbon dioxide were designed for localized pollution like particulate matter and lead, but make little sense when addressing greenhouse gases that are spread evenly throughout the globe, and for which unregulated foreign emissions are several times more significant than regulated domestic sources. The end result of this unilateral scheme cannot help but be ineffective in addressing climate change.

In the years since the 1990 debate over CAA amendments, Congress has considered a number of pieces of legislation that would create authority to regulate greenhouse gases. In fact, Congress in the last ten years has considered and rejected a number of such bills – either cap-

and-trade legislation, multi-pollutant bills that included carbon dioxide as a pollutant, or other measures. The most recent and extensive debate was over the American Clean Energy and Security Act of 2009, for which no Senate counterpart was ever brought to a vote in that body. The fact that members introduced these bills strongly suggests that they did not believe Congress had already created such authority when it enacted the original CAA or its 1977 and 1990 amendments. More importantly, the fact that none of these bills were enacted underscores where Congress stands on the issue.

The very objections Congress has expressed over global warming measures are precisely those being realized now that EPA's regulations are coming into force. A clear example of this can be seen with the 95-0 passage of S. Res 98, the Senate Byrd-Hagel Resolution. This 1997 resolution expressed the sense of the Senate that the U.S. should not become a signatory to the any multilateral global warming treaty that either exempted developing nations like China or harmed the U.S. economy. The Kyoto Protocol did both, and indeed neither President Clinton nor his successors has submitted the treaty to the Senate for ratification. The very fears raised by the Senate in its Byrd-Hagel resolution – disproportionate and significant harm to the American economy - are now being realized under EPA's regulations.

Proponents of EPA's agenda have stated that the Supreme Court' decision should be the last word, but this is incorrect. The Supreme Court did not mandate that the EPA make an endangerment finding and indeed no administration whether Democrat or Republican has ever made such an unprecedented finding. While it is the role of the Supreme Court to interpret existing legislation such as the CAA, Congress is free to amend or clarify that legislation if it believes the Supreme Court concluded wrongly or that circumstances necessitate a change in the law. Indeed, the current Congress would be remiss if it ignored the deleterious impact of EPA's regulatory agenda in favor of a highly controversial 5 to 4 Supreme Court decision and its

interpretation of Congressional intent when the CAA which was enacted - decades before global warming emerged as an issue.

Further, it should be noted that in *Massachusetts v. EPA* the issue before the Court was standards for motor vehicles and “whether EPA has the statutory authority to regulate greenhouse emissions from new motor vehicles” under Section 202(a) of the Clean Air Act. The Court concluded that EPA had the authority to regulate such emissions under section 202(a)(1) of the CAA Act “[i]f EPA makes a finding of endangerment” under the provision, stating that “EPA must ground its reasons for action or inaction in the statute.. The Court never addressed standards for regulation of greenhouse gases from stationary sources. To the extent that EPA has moved forward with regulation of motor vehicle emissions, H.R. 910 allows EPA’s regulation of greenhouse gases from motor vehicles under its light-duty vehicle rule and proposed medium and heavy duty truck rule, while prohibiting the agency’s expansion of such regulation for future years and preventing the agency from moving forward with its regulation of greenhouse gas emissions from stationary sources.

HEARINGS

The Subcommittee on Energy and Power on February 9, 2011 held a legislative hearing on the discussion draft of “The Energy Tax Prevention Act” and received testimony from:

- The Honorable James M. Inhofe, U.S. Senator, Ranking Member, Committee on Environment and Public Works
- The Honorable Lisa Jackson, Administrator, U.S. Environmental Protection Agency
- The Honorable Greg Abbott, Attorney General, State of Texas
- Harry C. Alford, President and CEO, National Black Chamber of Commerce
- Steve Rowlan, General Manager, Environmental Affairs, Nucor Corporation

- James Pearce, Director of Manufacturing, FMC Corporation
- Steve Cousins, Vice President, Lion Oil Company
- Philip Nelson, President, Illinois Farm Bureau
- Lonnie N. Carter, President and CEO, Santee Cooper
- Betsey Blaisdell, Senior Manager of Environmental Stewardship, The Timberland Company
- Fred T. Harnack, General Manager, Environmental Affairs, U.S. Steel Corporation
- Peter S. Glaser, Partner, Troutman Sanders LLP
- Margo Thorning, Senior Vice President and Chief Economist, American Council for Capital Formation
- Lynn R. Goldman, American Public Health Association
- James N. Goldstene, Executive Officer, California Air Resources Board

The Subcommittee on Energy and Power on March 1, 2011 held a hearing on “EPA’s Greenhouse gas Regulations and Their Effect on American Jobs.” The Subcommittee received testimony from:

- Mike Carey, President, Ohio Coal Association
- Forrest McConnell, President, McConnell Honda & Acura (on behalf of the National Automobile Dealers Association)
- Dan Reicher, Professor of Law and Executive Director of the Steyer-Taylor Center for Energy Policy and Finance, Stanford Law School
- Hugh a. Joyce, President, James River Air Conditioning Company, Inc. (on behalf of National Federation of Independent Business)

- W. David Montgomery, Vice President, Charles River Associates
- Paul Cicio, President, Industrial Energy Consumers of America
- The Honorable Gina A. McCarthy, Assistant Administrator, Office of Air and Radiation, U.S. Environmental Protection Agency

The Subcommittee on Energy and Power on March 8, 2011 held a hearing on “Climate Science and EPA’s Greenhouse gas Regulations.” The Subcommittee received testimony from:

- Dr. Richard Somerville, Distinguished Professor Emeritus, Scripps Institution of Oceanography, University of California, San Diego
- Dr. Christopher Field, Director, Department of Global Ecology, Carnegie Institution of Washington
- Dr. Francis W. Zwiers, Director, Pacific Climate Impacts Consortium, University of Victoria
- Dr. Donald Roberts, Professor Emeritus, Uniformed Services University of the Health Sciences
- Dr. John R. Christy, Director, Earth System Science Center, University of Alabama in Huntsville
- Dr. Roger Pielke, Sr., Senior Research Scientist, Cooperative Institute for Research in Environmental Sciences, University of Colorado at Boulder
- Dr. Knute Nadelhoffer, Director, University of Michigan Biological Station, University of Michigan

COMMITTEE CONSIDERATION

On February 2, 2011, Chairman Fred Upton and Subcommittee on Energy and Power Chairman Ed Whitfield released a discussion draft of the Energy Tax Prevention Act of 2011. On March 3, 2011, the proposed legislation was introduced as H.R. 910.

On March 10, the Subcommittee on Energy and Power reported the bill and favorably recommended it to the full Committee. During the markup, no amendments were offered.

On March 14, 2011 and March 15, 2011 the Committee on Energy and Commerce met in open markup session. During the markup, eleven amendments were offered of which one was adopted, as amended. On March 15, 2011, the Committee ordered H.R. 910 favorably reported to the House, amended.

COMMITTEE VOTES

Clause 3(b) of rule XII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Mr. Upton to order H.R. 910, reported to the House, as amended, was agreed to by a record vote of 34 yeas and 19 nays. The following reflects the recorded votes taken during the Committee consideration, including the names of those Members voting for and against.

COMMITTEE ON ENERGY AND COMMERCE -- 112TH CONGRESS
ROLL CALL VOTE # 5

BILL: H.R. 910, the "Energy Tax Prevention Act of 2011"

AMENDMENT: An amendment by Mr. Waxman, No. 1, to add a new section accepting the Environmental Protection Agency's finding that warming of the climate system is unequivocal.

DISPOSITION: NOT AGREED TO, by a roll call vote of 20 yeas to 31 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Dingell	X		
Mr. Stearns		X		Mr. Markey	X		
Mr. Whitfield		X		Mr. Towns	X		
Mr. Shimkus		X		Mr. Pallone	X		
Mr. Pitts		X		Mr. Rush	X		
Mrs. Bono Mack		X		Ms. Eshoo	X		
Mr. Walden		X		Mr. Engel			
Mr. Terry		X		Mr. Green	X		
Mr. Rogers		X		Ms. DeGette	X		
Mrs. Myrick		X		Mrs. Capps	X		
Mr. Sullivan		X		Mr. Doyle			
Mr. Murphy		X		Ms. Schakowsky	X		
Mr. Burgess		X		Mr. Gonzalez	X		
Mrs. Blackburn		X		Mr. Inslee	X		
Mr. Bilbray		X		Ms. Baldwin	X		
Mr. Bass		X		Mr. Ross	X		
Mr. Gingrey		X		Mr. Weiner			
Mr. Scalise		X		Mr. Matheson	X		
Mr. Latta		X		Mr. Butterfield	X		
Mrs. McMorris Rodgers		X		Mr. Barrow	X		
Mr. Harper		X		Ms. Matsui	X		
Mr. Lance		X		Ms. Christensen	X		
Mr. Cassidy		X					
Mr. Guthrie		X					
Mr. Olson		X					
Mr. McKinley		X					
Mr. Gardner		X					
Mr. Pompeo		X					
Mr. Kinzinger		X					
Mr. Griffith		X					

COMMITTEE ON ENERGY AND COMMERCE – 112TH CONGRESS
ROLL CALL VOTE # 6

BILL: H.R. 910, the "Energy Tax Prevention Act of 2011"

AMENDMENT: An amendment by Ms. DeGette, No. 2, to add a new section accepting the Environmental Protection Agency's finding that the scientific evidence is compelling that elevated concentrations of greenhouse gases resulting from anthropogenic emissions are the root cause of recently observed climate change.

DISPOSITION: NOT AGREED TO, by a roll call vote of 21 yeas to 30 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Dingell	X		
Mr. Stearns		X		Mr. Markey	X		
Mr. Whitfield		X		Mr. Towns	X		
Mr. Shimkus		X		Mr. Pallone	X		
Mr. Pitts		X		Mr. Rush	X		
Mrs. Bono Mack		X		Ms. Eshoo	X		
Mr. Walden		X		Mr. Engel			
Mr. Terry		X		Mr. Green	X		
Mr. Rogers		X		Ms. DeGette	X		
Mrs. Myrick		X		Mrs. Capps	X		
Mr. Sullivan		X		Mr. Doyle	X		
Mr. Murphy		X		Ms. Schakowsky	X		
Mr. Burgess		X		Mr. Gonzalez			
Mrs. Blackburn				Mr. Inslee	X		
Mr. Bilbray		X		Ms. Baldwin	X		
Mr. Bass		X		Mr. Ross	X		
Mr. Gingrey		X		Mr. Weiner	X		
Mr. Scalise		X		Mr. Matheson	X		
Mr. Latta		X		Mr. Butterfield	X		
Mrs. McMorris Rodgers		X		Mr. Barrow	X		
Mr. Harper		X		Ms. Matsui	X		
Mr. Lance		X		Ms. Christensen	X		
Mr. Cassidy		X					
Mr. Guthrie		X					
Mr. Olson		X					
Mr. McKinley		X					
Mr. Gardner		X					
Mr. Pompeo		X					
Mr. Kinzinger		X					
Mr. Griffith		X					

COMMITTEE ON ENERGY AND COMMERCE -- 112TH CONGRESS
ROLL CALL VOTE # 7

BILL: H.R. 910, the "Energy Tax Prevention Act of 2011"

AMENDMENT: An amendment by Mr. Inslee, No. 3, to add a new section accepting the Environmental Protection Agency's finding that greenhouse gases are a threat to public health, that the threat will likely mount as greenhouse gases continue to accumulate in the atmosphere and result in increased rates of climate change.

DISPOSITION: NOT AGREED TO, by a roll call vote of 21 yeas to 31 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Dingell	X		
Mr. Stearns		X		Mr. Markey	X		
Mr. Whitfield		X		Mr. Towns	X		
Mr. Shimkus		X		Mr. Pallone	X		
Mr. Pitts		X		Mr. Rush	X		
Mrs. Bono Mack		X		Ms. Eshoo	X		
Mr. Walden		X		Mr. Engel			
Mr. Terry		X		Mr. Green	X		
Mr. Rogers		X		Ms. DeGette	X		
Mrs. Myrick		X		Mrs. Capps	X		
Mr. Sullivan		X		Mr. Doyle	X		
Mr. Murphy		X		Ms. Schakowsky	X		
Mr. Burgess		X		Mr. Gonzalez			
Mrs. Blackburn		X		Mr. Inslee	X		
Mr. Bilbray		X		Ms. Baldwin	X		
Mr. Bass		X		Mr. Ross	X		
Mr. Gingrey		X		Mr. Weiner	X		
Mr. Scalise		X		Mr. Matheson	X		
Mr. Latta		X		Mr. Butterfield	X		
Mrs. McMorris Rodgers		X		Mr. Barrow	X		
Mr. Harper		X		Ms. Matsui	X		
Mr. Lance		X		Ms. Christensen	X		
Mr. Cassidy		X					
Mr. Guthrie		X					
Mr. Olson		X					
Mr. McKinley		X					
Mr. Gardner		X					
Mr. Pompeo		X					
Mr. Kinzinger		X					
Mr. Griffith		X					

**COMMITTEE ON ENERGY AND COMMERCE – 112TH CONGRESS
ROLL CALL VOTE # 8**

BILL: H.R. 910, the “Energy Tax Prevention Act of 2011”

AMENDMENT: An amendment by Mr. Markey, No. 6, to add a new section to allow the Administrator of the Environmental Protection Agency to promulgate regulations concerning, take action relating to, or take into consideration greenhouse gas emissions to address climate change, if such action will reduce demand for oil.

DISPOSITION: NOT AGREED TO, by a roll call vote of 16 yeas to 34 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Dingell			
Mr. Stearns		X		Mr. Markey	X		
Mr. Whitfield		X		Mr. Towns	X		
Mr. Shimkus		X		Mr. Pallone	X		
Mr. Pitts		X		Mr. Rush			
Mrs. Bono Mack		X		Ms. Eshoo	X		
Mr. Walden		X		Mr. Engel	X		
Mr. Terry		X		Mr. Green		X	
Mr. Rogers		X		Ms. DeGette	X		
Mrs. Myrick		X		Mrs. Capps	X		
Mr. Sullivan				Mr. Doyle	X		
Mr. Murphy		X		Ms. Schakowsky	X		
Mr. Burgess				Mr. Gonzalez		X	
Mrs. Blackburn		X		Mr. Inslee	X		
Mr. Bilbray		X		Ms. Baldwin	X		
Mr. Bass		X		Mr. Ross		X	
Mr. Gingrey		X		Mr. Weiner	X		
Mr. Scalise		X		Mr. Matheson		X	
Mr. Latta		X		Mr. Butterfield	X		
Mrs. McMorris Rodgers		X		Mr. Barrow		X	
Mr. Harper		X		Ms. Matsui	X		
Mr. Lance		X		Ms. Christensen	X		
Mr. Cassidy		X					
Mr. Guthrie		X					
Mr. Olson		X					
Mr. McKinley		X					
Mr. Gardner		X					
Mr. Pompeo		X					
Mr. Kinzinger		X					
Mr. Griffith		X					

Current as of 03/14/2011

**COMMITTEE ON ENERGY AND COMMERCE -- 112TH CONGRESS
ROLL CALL VOTE # 9**

BILL: H.R. 910, the "Energy Tax Prevention Act of 2011"

AMENDMENT: A motion by Mr. Upton to order H.R. 910 favorably reported to the House, amended. (Final Passage)

DISPOSITION: AGREED TO, by a roll call vote of 34 yeas to 19 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton	X			Mr. Waxman		X	
Mr. Barton	X			Mr. Dingell		X	
Mr. Stearns	X			Mr. Markey		X	
Mr. Whitfield	X			Mr. Towns		X	
Mr. Shimkus	X			Mr. Pallone		X	
Mr. Pitts	X			Mr. Rush		X	
Mrs. Bono Mack	X			Ms. Eshoo		X	
Mr. Walden	X			Mr. Engel		X	
Mr. Terry	X			Mr. Green		X	
Mr. Rogers	X			Ms. DeGette		X	
Mrs. Myrick	X			Mrs. Capps		X	
Mr. Sullivan	X			Mr. Doyle		X	
Mr. Murphy	X			Ms. Schakowsky		X	
Mr. Burgess	X			Mr. Gonzalez			
Mrs. Blackburn	X			Mr. Inslee		X	
Mr. Bilbray	X			Ms. Baldwin		X	
Mr. Bass	X			Mr. Ross	X		
Mr. Gingrey	X			Mr. Weiner		X	
Mr. Scalise	X			Mr. Matheson	X		
Mr. Latta	X			Mr. Butterfield		X	
Mrs. McMorris Rodgers	X			Mr. Barrow	X		
Mr. Harper	X			Ms. Matsui		X	
Mr. Lance	X			Ms. Christensen		X	
Mr. Cassidy	X						
Mr. Guthrie	X						
Mr. Olson	X						
Mr. McKinley	X						
Mr. Gardner	X						
Mr. Pompeo	X						
Mr. Kinzinger	X						
Mr. Griffith	X						

Current as of 03/14/2011

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee made findings that are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE, GOALS AND OBJECTIVES

H.R. 910 amends the CAA to clarify that the Administrator of the Environmental Protection Agency does not have the authority to promulgate any regulation concerning, take action relating to, or take into consideration the emission of a greenhouse gas to address climate change, and for other purposes.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the committee finds that H.R. 910, the Energy Tax Prevention Act of 2011, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

EARMARK

In compliance with clause 9(e), 9(f), and 9(g) of rule XXI, the committee finds that H.R. 910, the energy Tax Prevention Act of 2011, contains no earmarks, *limited tax benefits, or limited tariff benefits.*

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the costs estimate provided by the congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

March 30, 2011

H.R. 910

Energy Tax Prevention Act of 2011

*As ordered reported by the House Committee on Energy and Commerce
on March 15, 2011*

SUMMARY

H.R. 910 would amend the Clean Air Act to prohibit the Environmental Protection Agency (EPA) from regulating greenhouse gases (GHGs) to address climate change. The bill would create exceptions for various programs in current law, including emission standards for vehicles and EPA's renewable fuel standard. Because certain EPA activities associated with regulating GHGs would be prohibited under the bill, CBO estimates that enacting this legislation would save \$57 million in 2012 and about \$250 million over the 2012-2016 period, assuming that appropriations in those years were reduced accordingly.

Pay-as-you-go procedures do not apply to H.R. 910 because the bill would not affect direct spending or revenues.

H.R. 910 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) because it would expand an existing preemption of state laws that regulate greenhouse gas emissions from motor vehicles. Although the preemption would

limit the application of state law, CBO estimates that it would impose no duty on state governments that would result in additional spending.

The bill contains no new private-sector mandates as defined in UMRA.

ESTIAMTED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 910 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By Fiscal Year, in Millions of Dollars					2012-
	2012	2013	2014	2015	2016	2016
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	-57	-58	-59	-60	-62	-296
Estimated Outlays	-23	-49	-58	-60	-60	-250

BASIS OF ESTIMATE

For this estimate, CBO assumes that H.R. 910 will be enacted by the end of fiscal year 2011, that appropriations for regulating GHGs will be reduced, and that resulting outlay savings will follow historical spending patterns for identical and similar programs.

According to EPA, appropriations allocated to support activities related to regulating GHGs totaled about \$17 million in 2010. Funding at that annual rate is also provided for 2011 under the Additional Continuing Appropriations Amendments, 2011 (Public Law 112-6).¹ Based on information from EPA, CBO estimates that for 2012 the agency will require an additional \$40 million in appropriations under current law to support various activities related to regulating GHGs, including promulgating New Source Performance Standards, establishing permitting requirements, and continuing to support ongoing efforts associated with the GHG reporting registry. Under this legislation, such activities would be prohibited. Thus, CBO estimates that enacting the legislation would reduce the need for appropriations in 2012 by about \$57 million.

¹ A full-year appropriation for EPA programs in 2011 has not yet been enacted. For this estimate, CBO assumes that the partial-year funding already provided will be increased proportionately—annualized—to provide full-year funding.

In subsequent years, it is not certain whether EPA would pursue additional activities to meet requirements related to regulating GHGs under current law or whether current activities would be maintained. However, assuming funding levels in those years would remain close to the 2012 level with adjustments for inflation, CBO estimates that enacting the legislation would result in savings of \$250 million over the 2012-2016 period, if appropriations for EPA over that period were reduced accordingly.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 910 contains an intergovernmental mandate as defined in UMRA because it would expand an existing preemption of state laws that regulate GHGs from motor vehicles. Under current law, California may obtain a waiver from EPA to establish its own standard for GHGs from motor vehicles. Once EPA has approved the waiver, other states may adopt the California standard. The bill would prevent EPA from approving such waivers, thus expanding the preemption. Although the preemption would limit the application of state law, CBO estimates that it would impose no duty on state governments that would result in additional spending.

The bill contains no new private-sector mandates as defined in UMRA.

ESTIMATE PREPARED BY:

Federal Costs: Susanne S. Mehlman

Impact on State, Local, and Tribal Governments: Ryan Miller

Impact on the Private Sector: Amy Petz

ESTIMATE APPROVED BY:

Theresa Gullo

Deputy Assistant Director for Budget Analysis

March 30, 2011

Honorable Fred Upton
Chairman
Committee on Energy
and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 910, the Energy Tax Prevention Act of 2011.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman, who can be reached at 226-2860.

Sincerely,

Douglas W. Elmendorf

Enclosure

cc: Honorable Henry A. Waxman
Ranking Member

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF LEGISLATION

Section 1: Short Title

Section 1 provides the short title for the legislation, the “Energy Tax Prevention Act of 2011.”

Section 2: No Regulation of Emissions of Greenhouse gases

Section 2 amends the General Provisions of the Clean Air Act by adding a new Section 330. Section 330(a) expressly defines the greenhouse gases that are to be excluded from any climate change-related regulation (*e.g.*, water vapor, carbon dioxide, and methane). Section 330(b)(1) makes clear that the Administrator of EPA may not promulgate regulations or take action with respect to greenhouse gases to address climate change under the Clean Air Act. The

term “air pollutant” is clarified to exclude greenhouse gases for the purposes of addressing climate change.

- Section 330(b)(2) provides for the following exceptions to the prohibition on the Administrator’s greenhouse gas regulatory authority: H.R. 910 allows EPA to implement emissions standards already promulgated by the agency for Model Year 2012-2016 passenger cars and trucks, and proposed by EPA for Model Years 2014-2018 for medium and heavy-duty trucks. H.R. 910 allows EPA to carry out statutorily authorized activities relating to its renewable fuel standard program which requires that transportation fuel sold in the United States contain a minimum volume of renewable fuel.
- H.R. 910 allows EPA to carry out statutorily authorized Federal research, development, and demonstration programs addressing climate change. H.R. 910 allows EPA to implement Title VI under the CAA which relates to stratospheric ozone protection and compliance with the Montreal Protocol on Substances That Deplete the Ozone Layer, to which the United States is a signatory. H.R. 910 does not preclude EPA from continuing to participate fully in the Montreal Protocol process and related international negotiations.
- H.R. 910 allows EPA to continue to require utilities to gather and report information on greenhouse gas emissions.

Section 330(b)(3) clarifies that the exceptions in (b)(2) do not trigger regulatory obligations under part C of Title I (“Prevention of Significant Deterioration of Air Quality”) or Title V (“Permits”) of the Clean Air Act.

Section 330 (b)(4) expressly repeals prior rulemakings by EPA relating to regulating greenhouse gases to address climate change.

Section 330(b)(5) states that nothing in the Act affects State authority to adopt and enforce State laws and regulations pertaining to greenhouse gases; however, any changes States have adopted in their State implementation plans and Title V operating permit programs with respect to greenhouse gases are not federally enforceable and are deemed stricken.

Section 3: Regulation of Automobiles

Section 3 amends Clean Air Act section 209(b) to exclude greenhouse gases from the Administrator's waiver authority for new motor vehicles or new motor vehicle engines for Model Year 2017 and any other subsequent model year. Subject to this limitation, nothing in the Act precludes states from pursuing their own state greenhouse gas policies or regimes. Further, nothing in the Act affects the National Highway Traffic Safety Administration's exclusive authority to set fuel economy standards for motor vehicles.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law in which no change is proposed is shown in roman):

[INSERT TEXT PREPARED BY LEG COUNSEL]

DISSENTING VIEWS

[MINORITY TO INSERT]

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

CLEAN AIR ACT

* * * * *

TITLE II—EMISSION STANDARDS FOR MOVING SOURCES

* * * * *

PART A—MOTOR VEHICLE EMISSION AND FUEL STANDARDS

* * * * *

STATE STANDARDS

SEC. 209. (a) * * *

(b)(1) * * *

* * * * *

(4) *With respect to standards for emissions of greenhouse gases (as defined in section 330) for model year 2017 or any subsequent model year new motor vehicles and new motor vehicle engines—*

(A) the Administrator may not waive application of subsection (a); and

(B) no waiver granted prior to the date of enactment of this paragraph may be construed to waive the application of subsection (a).

* * * * *

TITLE III—GENERAL

* * * * *

SEC. 330. NO REGULATION OF EMISSIONS OF GREENHOUSE GASES.

(a) *DEFINITION.—In this section, the term “greenhouse gas” means any of the following:*

- (1) Water vapor.*
- (2) Carbon dioxide.*
- (3) Methane.*
- (4) Nitrous oxide.*
- (5) Sulfur hexafluoride.*
- (6) Hydrofluorocarbons.*
- (7) Perfluorocarbons.*

(8) Any other substance subject to, or proposed to be subject to, regulation, action, or consideration under this Act to address climate change.

(b) LIMITATION ON AGENCY ACTION.—

(1) *LIMITATION.*—

(A) *IN GENERAL.*—The Administrator may not, under this Act, promulgate any regulation concerning, take action relating to, or take into consideration the emission of a greenhouse gas to address climate change.

(B) *AIR POLLUTANT DEFINITION.*—The definition of the term “air pollutant” in section 302(g) does not include a greenhouse gas. Notwithstanding the previous sentence, such definition may include a greenhouse gas for purposes of addressing concerns other than climate change.

(2) *EXCEPTIONS.*—Paragraph (1) does not prohibit the following:

(A) Notwithstanding paragraph (4)(B), implementation and enforcement of the rule entitled “Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards” (as published at 75 Fed. Reg. 25324 (May 7, 2010) and without further revision) and finalization, implementation, enforcement, and revision of the proposed rule entitled “Greenhouse Gas Emissions Standards and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles” published at 75 Fed. Reg. 74152 (November 30, 2010).

(B) Implementation and enforcement of section 211(o).

(C) Statutorily authorized Federal research, development, and demonstration programs addressing climate change.

(D) Implementation and enforcement of title VI to the extent such implementation or enforcement only involves one or more class I substances or class II substances (as such terms are defined in section 601).

(E) Implementation and enforcement of section 821 (42 U.S.C. 7651k note) of Public Law 101-549 (commonly referred to as the “Clean Air Act Amendments of 1990”).

(3) *INAPPLICABILITY OF PROVISIONS.*—Nothing listed in paragraph (2) shall cause a greenhouse gas to be subject to part C of title I (relating to prevention of significant deterioration of air quality) or considered an air pollutant for purposes of title V (relating to permits).

(4) *CERTAIN PRIOR AGENCY ACTIONS.*—The following rules and actions (including any supplement or revision to such rules and actions) are repealed and shall have no legal effect:

(A) “Mandatory Reporting of Greenhouse Gases”, published at 74 Fed. Reg. 56260 (October 30, 2009).

(B) “Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act”, published at 74 Fed. Reg. 66496 (December 15, 2009).

(C) “Reconsideration of Interpretation of Regulations That Determine Pollutants Covered by Clean Air Act Permitting Programs”, published at 75 Fed. Reg. 17004 (April 2, 2010) and the memorandum from Stephen L. Johnson, Environmental Protection Agency (EPA) Administrator, to EPA Regional Administrators, concerning “EPA’s Interpre-

tation of Regulations that Determine Pollutants Covered by Federal Prevention of Significant Deterioration (PSD) Permit Program (December 18, 2008).

(D) *“Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule”*, published at 75 Fed. Reg. 31514 (June 3, 2010).

(E) *“Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call”*, published at 75 Fed. Reg. 77698 (December 13, 2010).

(F) *“Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Failure To Submit State Implementation Plan Revisions Required for Greenhouse Gases”*, published at 75 Fed. Reg. 81874 (December 29, 2010).

(G) *“Action to Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan”*, published at 75 Fed. Reg. 82246 (December 30, 2010).

(H) *“Action to Ensure Authority to Implement Title V Permitting Programs Under the Greenhouse Gas Tailoring Rule”*, published at 75 Fed. Reg. 82254 (December 30, 2010).

(I) *“Determinations Concerning Need for Error Correction, Partial Approval and Partial Disapproval, and Federal Implementation Plan Regarding Texas Prevention of Significant Deterioration Program”*, published at 75 Fed. Reg. 82430 (December 30, 2010).

(J) *“Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans”*, published at 75 Fed. Reg. 82536 (December 30, 2010).

(K) *“Determinations Concerning Need for Error Correction, Partial Approval and Partial Disapproval, and Federal Implementation Plan Regarding Texas Prevention of Significant Deterioration Program; Proposed Rule”*, published at 75 Fed. Reg. 82365 (December 30, 2010).

(L) Except for actions listed in paragraph (2), any other Federal action under this Act occurring before the date of enactment of this section that applies a stationary source permitting requirement or an emissions standard for a greenhouse gas to address climate change.

(5) STATE ACTION.—

(A) NO LIMITATION.—This section does not limit or otherwise affect the authority of a State to adopt, amend, enforce, or repeal State laws and regulations pertaining to the emission of a greenhouse gas.

(B) EXCEPTION.—

(i) RULE.—Notwithstanding subparagraph (A), any provision described in clause (ii)—

(I) is not federally enforceable;

(II) is not deemed to be a part of Federal law;

and

(III) is deemed to be stricken from the plan described in clause (ii)(I) or the program or permit described in clause (ii)(II), as applicable.

(ii) PROVISION DEFINED.—For purposes of clause (i), the term “provision” means any provision that—

(I) is contained in a State implementation plan under section 110 and authorizes or requires a limitation on, or imposes a permit requirement for, the emission of a greenhouse gas to address climate change; or

(II) is part of an operating permit program under title V, or a permit issued pursuant to title V, and authorizes or requires a limitation on the emission of a greenhouse gas to address climate change.

(C) ACTION BY ADMINISTRATOR.—The Administrator may not approve or make federally enforceable any provision described in subparagraph (B)(ii).

* * * * *

Dissenting Views on H.R. 910

H.R. 910 was introduced on March 3, 2011, by Chairman Fred Upton and Subcommittee Chairman Ed Whitfield. Senator James Inhofe introduced a companion bill in the Senate (S. 482) on the same date.

The Upton-Inhofe bill reported by the Committee on Energy and Commerce legislatively repeals a scientific finding by the Environmental Protection Agency that greenhouse gases endanger public health and welfare. The Upton-Inhofe bill would also broadly eliminate EPA's authority to address emissions of greenhouse gases and the danger of climate change. This is an unprecedented action by members of Congress to substitute their opinions for a scientific finding that EPA made based on the best available scientific research and understanding.

The bill is titled "The Energy Tax Prevention Act of 2011" and, according to its sponsors, has a primary purpose of stopping the Environmental Protection Agency (EPA) from "imposing a backdoor cap-and-trade tax."¹ However, EPA does not have taxing authority, nor has EPA proposed to establish a cap and trade program. In fact, EPA officials have recently stated that they will not establish a cap on carbon pollution.²

The bill sponsors also assert that the purpose of the bill is to stop rising gas prices, claiming that planned EPA regulations will restrict oil supplies and cause gas prices to rise. This claim was labeled "false" by Politifact, a project of the *St. Petersburg Times* to fact check statements by members of Congress and other public figures.³ The claim is flawed in multiple respects. First, gas prices are rising now, and there is widespread consensus that the increase is due to concerns about unrest in the Middle East.⁴ EPA has not yet even proposed greenhouse gas regulations that would apply to oil refineries, and it will take years before any such regulations are final and require any control of greenhouse gas emissions. Nor is there any indication that the regulations will be particularly stringent or burdensome. Also, there is general agreement that gas prices are largely driven by the price of oil, which is determined on the world market and is unaffected by any EPA greenhouse gas regulations.

In fact, EPA's greenhouse gas regulations will significantly reduce Americans' spending on gasoline. EPA has issued greenhouse gas regulations for light-duty vehicles

¹ House Committee on Energy and Commerce, Press Release, *Upton, Whitfield, Inhofe Unveil Energy Tax Prevention Act to Protect America's Jobs & Families* (Feb. 7, 2011) (online at <http://energycommerce.house.gov/news/PRArticle.aspx?NewsID=8178>).

² *EPA Promises to Avoid Cap, But Some Utilities Want Trade*, E&E News (Feb. 4, 2011).

³ *Fred Upton Says Pending Bill to Block EPA Curbs of Greenhouse Gases Will 'Stop Rising Gas Prices,'* PolitiFact (Mar. 14, 2011) (online at <http://www.politifact.com/truth-o-meter/statements/2011/mar/14/fred-upton/fred-upton-says-pending-bill-block-epa-curbs-green/>).

⁴ *See, Libyan Unrest Keeps Oil Price on the Boil*, Financial Times (Mar. 7, 2011).

for model years 2012-2016, and those regulations are projected to save consumers on average \$3,000 at the pump over the life of the vehicles.⁵ The Upton-Inhofe bill would block EPA from extending and strengthening these standards for vehicles after 2016, and would even endanger the existing standards by creating a new legal vulnerability.

The bill is also premised on the claim that climate change is a hoax, as stated by Senator Inhofe, and therefore EPA's scientific finding of endangerment is invalid and action to address the problem is unnecessary. At a hearing on climate science on March 8, 2011, held at the request of Committee Democrats, eminent climate scientists presented overwhelming scientific evidence that the earth is warming, that observed climate change is primarily caused by human activities, and that harmful and costly impacts of climate change are already occurring and will become more severe over time.⁶ In an editorial on this hearing and the Upton-Inhofe legislation, the editors of *Nature*, one of the world's two top science journals, stated "the legislation is fundamentally anti-science, just as the rhetoric that supports it is grounded in willful ignorance."⁷

In summary, the Upton-Inhofe bill would:

- Overturn the Supreme Court's opinion finding that EPA has the authority to regulate greenhouse gases under the Clean Air Act.
- Overturn EPA's scientific determination that greenhouse gases endanger human health and the environment.
- Prohibit EPA from requiring stationary sources to reduce greenhouse gas emissions.
- Prohibit EPA from requiring additional reductions of greenhouse gas emissions from motor vehicles and repeal California's authority to regulate greenhouse gas emissions from motor vehicles.
- Prohibit EPA from requiring reductions of greenhouse gas emissions from other mobile sources, such as planes, trains, boats, and large construction equipment.
- Prohibit EPA from enforcing existing greenhouse gas reporting requirements.
- Interfere with EPA's implementation of Title VI of the Clean Air Act, which addresses ozone-depleting chemicals and substitutes for such chemicals, as well

⁵ U.S. EPA, EPA and NHTSA Finalize Historic National Program to Reduce Greenhouse Gases and Improve Fuel Economy for Cars and Trucks (Apr. 2010) (online at <http://www.epa.gov/otaq/climate/regulations/420f10014.htm>).

⁶ Energy & Commerce Committee, Energy & Power Subcommittee, *Hearing on Climate Science and EPA's Greenhouse Gas Regulations* (Mar. 8, 2011).

⁷ *Into Ignorance*, *Nature* (Mar. 16, 2011) (online at <http://www.nature.com/nature/journal/v471/n7338/full/471265b.html>).

as undermine Administration negotiating positions under the Montreal Protocol on Substances that Deplete the Ozone Layer.

- Create legal uncertainty about the status of the recent motor vehicle standards adopted by EPA.
- Call into question EPA's authority to implement voluntary programs to reduce greenhouse gas emissions.
- Create new litigation opportunities for opponents of regulation of conventional pollutants.

The bill is opposed by: the American Lung Association⁸, American Public Health Association,⁹ American Thoracic Society; Asthma and Allergy Foundation of America; Physicians for Social Responsibility; Trust for America's Health;¹⁰ 1,882 doctors, nurses and other medical professionals;¹¹ retired high-ranking U.S. military officers;¹² 2,505

⁸ Letter from Charles D. Connor, President and CEO of the American Lung Association, to Rep. Ed Whitfield and Rep. Bobby L. Rush (Mar. 10, 2011) (online at http://edit-democrats.energycommerce.house.gov/sites/default/files/image_uploads/HR910Opposition_03.10.11_AmericanLungAssociation.pdf).

⁹ Letter from Georges C. Benjamin, Executive Director of the American Public Health Association, to Rep. Ed Whitfield and Rep. Bobby Rush (Mar. 9, 2011) (online at http://edit-democrats.energycommerce.house.gov/sites/default/files/image_uploads/APHAOppositionLetter_03.10.11.pdf).

¹⁰ Letter from Charles Connor, President and CEO of the American Lung Association; Bill McLin, President and CEO of the Asthma and Allergy Foundation of America; Georges C. Benjamin, Executive Director of the American Public Health Association; Peter Wilk, Executive Director of Physicians for Social Responsibility; Dean E. Schraufnagel, President of the American Thoracic Society; and Jeffrey Levi, Executive Director of the Trust for America's Health; to the U.S. House of Representatives (Mar. 14, 2011) (online at http://democrats.energycommerce.house.gov/sites/default/files/image_uploads/HealthOrganizationsOpposeHR910_0.pdf).

¹¹ Letter from Health and Medical Professionals, to the U.S. House of Representatives (Feb. 9, 2011) (online at http://democrats.energycommerce.house.gov/sites/default/files/image_uploads/House%20Doc%20Letter%20Final_0.pdf).

¹² Letter from Retired US Air Force Lt. General Norman Seip, Retired US Navy Rear Admiral Stuart Platt, and Retired US Army Maj. General George Buskirk, to Rep. Henry Waxman (Mar. 10, 2011) (online at http://democrats.energycommerce.house.gov/sites/default/files/image_uploads/Military_OpposeUptonInhofe_03.10.11.pdf).

scientists;¹³ Natural Resources Defense Council; League of Conservation Voters; Center for Biological Diversity; Environment America; Conservation Law Foundation; National Audubon Society; The Wilderness Society; Earthjustice; U.S. Climate Action Network; Center for American Progress Action Fund; American Rivers; Sierra Club; Defenders of Wildlife; Environmental Defense Fund; and Union of Concerned Scientists, among others.¹⁴

In addition, last year 120 public health associations stated their opposition to “any efforts to weaken, delay or block the EPA from protecting the public’s health” from risks from climate change,¹⁵ and 255 members of the National Academy of Sciences affirmed the threat from climate change and called for action to reduce it.¹⁶

I. Upton-Inhofe Overturns *Massachusetts v. EPA*

The Upton-Inhofe bill overturns the landmark Supreme Court case *Massachusetts v. EPA*, which held that greenhouse gases, including carbon dioxide, are “air pollutants” under the Clean Air Act that EPA must regulate if they endanger public health or welfare.¹⁷ The bill adds a new section 330(b)(1)(B) to the Clean Air Act that provides that the term “air pollutant” ... does not include a greenhouse gas.” Additionally, new section 330(b)(1)(A) would amend the Clean Air Act to state that EPA may not take action on carbon pollution or even “take into consideration” carbon pollution in the future regardless of the danger it poses to public health or welfare.

¹³ Letter from 2,505 scientists, to the U.S. House of Representatives (Feb. 2011) (online at http://democrats.energycommerce.house.gov/sites/default/files/image_uploads/LettersScientists_03.08.11.pdf).

¹⁴ Letter from the Natural Resources Defense Council, League of Conservation Voters, Center for Biological Diversity, Environment America, Conservation Law Foundation, National Audubon Society, The Wilderness Society, Earthjustice, U.S. Climate Action Network, Center for American Progress Action Fund, American Rivers, Physicians for Social Responsibility, Sierra Club, Defenders of Wildlife, Environmental Defense Fund, and the Union of Concerned Scientists, to Rep. Ed Whitfield and Rep. Bobby Rush (Mar. 9, 2011) (online at http://edit-democrats.energycommerce.house.gov/sites/default/files/image_uploads/HR910Opposition_03.10.11_Organizations.pdf).

¹⁵ Letter from 120 Public Health Associations, to President Barack Obama, the U.S. Senate, and the U.S. House of Representatives (Sep. 28, 2010) (online at <http://www.apha.org/NR/rdonlyres/2405CEFA-854D-4EE0-814E-86C8552A3CBB/0/PHgroupssignonclimatechange92810final.pdf>).

¹⁶ 255 Members of the National Academy of Sciences, *Climate Change and the Integrity of Science*, Science Magazine (May 7, 2010) (online at http://democrats.energycommerce.house.gov/sites/default/files/image_uploads/LetterNationalAcademies_03.08.11.pdf).

¹⁷ *Massachusetts v. EPA*, 127 S. Ct. 1438 (2007).

II. Upton-Inhofe Repeals EPA's Endangerment Finding

New section 330(b)(4)(B) of the Clean Air Act would legislatively repeal EPA's scientific determination that greenhouse gases threaten public health and welfare, commonly known as the endangerment finding. This determination was made in 2009, when the EPA Administrator found that the current and projected concentrations of the six key greenhouse gases — carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF₆) — in the atmosphere threaten the public health and welfare of current and future generations.¹⁸

Legislatively repealing the scientific determination directly conflicts with the consensus of climate scientists and the world's most authoritative scientific organizations, including:

- The National Academy of Sciences, which reported in 2010: "Climate change is occurring, is caused largely by human activities, and poses significant risks for—and in many cases is already affecting—a broad range of human and natural systems."¹⁹
- The premier scientific institutions of all of the world's major economies (including the United States, the United Kingdom, France, Germany, Russia, Japan, China, Brazil, and India), which have warned that "[t]he need for urgent action to address climate change is now indisputable."²⁰
- The American Association for the Advancement of Science, the American Geophysical Union, and the American Meteorological Society, along with 15 other leading scientific organizations, which have stated: "If we are to avoid the

¹⁸ Environmental Protection Agency, *Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act*, 74 Fed. Reg. 66496 (Dec. 15, 2009).

¹⁹ National Research Council, *Advancing the Science of Climate Change* (2010) (online at http://www.nap.edu/catalog.php?record_id=12782).

²⁰ G8+5 Academies' joint statement: Climate change and the transformation of energy technologies for a low carbon future, Academia Brasileira de Ciências, Brazil, Indian National Science Academy, India, Academy of Science of South Africa, South Africa, Royal Society of Canada, Canada, Accademia Nazionale dei Lincei, Italy, Royal Society, United Kingdom, Chinese Academy of Sciences, China, Science Council of Japan, Japan, National Academy of Sciences, United States of America, Académie des Sciences, France, Academia Mexicana de Ciencias, Mexico, Deutsche Akademie der Naturforscher Leopoldina, Germany, Russian Academy of Sciences, Russia (online at <http://www.nationalacademies.org/includes/G8+5energy-climate09.pdf>).

most severe impacts of climate change, emissions of greenhouse gases must be dramatically reduced.”²¹

- Thirteen federal departments and agencies, including NASA, the National Science Foundation, and the Department of Defense, which reported in 2009 that global warming is “unequivocal and primarily human-induced” and that “widespread climate-related impacts are occurring now and are expected to increase.”²²
- The Intergovernmental Panel on Climate Change (IPCC), which has reported: “Warming of the climate system is unequivocal, as is now evident from observations of increases in global average air and ocean temperatures, widespread melting of snow and ice and rising global average sea level.”²³

III. Upton-Inhofe Prohibits EPA from Regulating Stationary Sources

²¹ Letter to the U.S. Senate from the Presidents and Executive Directors of American Association for the Advancement of Science, American Chemical Society, American Geophysical Union, American Institute of Biological Sciences, American Meteorological Society, American Society of Agronomy, American Society of Plant Biologists, American Statistical Association, Association of Ecosystem Research Centers, Botanical Society of America, Crop Science Society of America, Ecological Society of America, Natural Science Collections, Alliance Organization of Biological Field Stations, Society for Industrial and Applied Mathematics, Society of Systematic Biologists, Soil Science Society of America, University Corporation for Atmospheric Research (Oct. 21, 2009) (online at http://www.aaas.org/news/releases/2009/media/1021climate_letter.pdf).

²² Global Climate Change Impacts in the United States, U.S. Global Change Research Program (2009) (online at <http://globalchange.gov/publications/reports/scientific-assessments/us-impacts>). These agencies participate in the U.S. Global Change Research Program (USGCRP). The USGCRP began as a presidential initiative in 1989 and was mandated by Congress in the Global Change Research Act of 1990 (P.L. 101-606), which called for “a comprehensive and integrated United States research program which will assist the Nation and the world to understand, assess, predict, and respond to human-induced and natural processes of global change.”

²³ Climate Change 2007: Synthesis Report, Intergovernmental Panel on Climate Change (2007) (online at http://www.ipcc.ch/publications_and_data/ar4/syr/en/spm.html). The IPCC is the leading international body for the assessment of climate change. It was established in 1988 by the World Meteorological Organization (WMO) and the United Nations Environment Programme (UNEP) to assess the “risk of human-induced climate change.” The Panel is open to all members of the WMO and UNEP, and includes more than 2500 scientists from around the world.

New section 330(b)(1)(A) provides that EPA may not take action on carbon pollution or even “take into consideration” carbon pollution in the future. It states:

The Administrator may not, under [the Clean Air Act], promulgate any regulation concerning, take action relating to, or take into consideration the emission of a greenhouse gas to address climate change.

This section has two primary effects on EPA authority to reduce emissions of greenhouse gases from stationary sources. First, it prohibits EPA from requiring permits to address greenhouse gases under its “prevention of significant deterioration” (PSD) program.²⁴ Second, it blocks EPA from setting minimum control requirements for major new and existing sources under the “new source performance standards” (NSPS) provisions.²⁵

A. Impact on the PSD Program

Once EPA regulated greenhouse gases from motor vehicles, the PSD permit review requirement applied automatically beginning January 2, 2011. It requires that major new facilities or existing facilities making major modifications that significantly increase emissions undergo a review of options to minimize increases in emissions.²⁶ In May 2010, EPA finalized a “tailoring rule” to limit the permit review requirements to only the largest sources.²⁷ Until June 30, 2011, only sources subject to PSD for other pollutants will be required to consider greenhouse gases in their permits.²⁸ From July 1, 2011, to June 30, 2013, only new sources that emit at least 100,000 tons of greenhouse gases per year or existing sources that modify and seek to increase pollution by at least 75,000 tons per year will be required to obtain PSD permits.²⁹ EPA has committed to undertake an additional rulemaking that will be completed before July 1, 2012, which would consider whether to lower the threshold further, but would not consider any level below 50,000 tons per year.³⁰

²⁴ CAA section 165.

²⁵ CAA section 111.

²⁶ See CAA sections 165, 169.

²⁷ U.S. Environmental Protection Agency, *Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule, Final Rule*, 75 Fed. Reg. 31514 (June 3, 2010).

²⁸ *Id.* at 31516.

²⁹ *Id.*

³⁰ *Id.*; U.S. Environmental Protection Agency, *Final Rule: Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule, Fact Sheet* (online at: <http://www.epa.gov/nsr/documents/20100413fs.pdf>).

PSD permit review is done on a case-by-case basis, taking into account the design and function of the specific facility undergoing review. The review is carried out by the permitting authorities, which are typically state or local pollution control agencies. The process requires consideration of all options for limiting emissions, followed by the elimination of those options that are too costly or technically infeasible, and the selection of the remaining option that permitting authorities consider to be “best available control technology” (BACT).

In November 2010, EPA issued guidance to state agencies on implementing the review requirements for greenhouse gases.³¹ The guidance emphasized that the well-established process and precedents used for other pollutants would also apply to greenhouse gases. The guidance also clarified what is likely to be required of sources. It indicated that energy efficiency improvements should in most cases constitute BACT for greenhouse gases.³² The guidance suggested that carbon capture and sequestration would likely be eliminated as an option for BACT because of high costs.³³ The guidance further stated that fuel switching that would fundamentally redefine a source (such as switching from coal to natural gas) would not need to be considered as an option.³⁴ In addition, EPA has announced that it intends to modify its policies to provide that certain permit applications that have been pending with the agency for a substantial period of time will not need to be modified to comply with subsequently applicable air quality requirements, including the greenhouse gas PSD requirements.³⁵

Forty-nine states have taken actions to ensure that permit applications could go forward when the greenhouse gas review requirements went into effect on January 2, 2011.³⁶ Only Texas failed to take the necessary actions. To ensure that applicants in Texas could receive the necessary pre-construction permits, EPA issued an interim final

³¹ U.S. Environmental Protection Agency, *PSD and Title V Permitting Guidance For Greenhouse Gases* (hereinafter *Guidance*) (Nov. 2010) (online at <http://www.epa.gov/nsr/ghgdocs/epa-hq-oar-2010-0841-0001.pdf>); U.S. Environmental Protection Agency, *Greenhouse Gas Permitting Guidance, Summary Slides* (hereinafter *Summary*) (Fall 2010) (online at: http://epa.gov/air/oaqps/eog/video/pdfs/GHGPermittingGuidance_Nov18&19Webinars.pdf).

³² *Guidance* at 46; *Summary* at 17.

³³ *Guidance* at 36-38; *Summary* at 24.

³⁴ *Guidance* at 29; *Summary* at 19.

³⁵ See Declaration of Regina McCarthy, *Avenal Power Center, LLC v. U.S. EPA* (Case No.: 1:10-cv-00383-RJL) (Jan. 31, 2011).

³⁶ National Association of Clean Air Agencies, *GHG Permitting Programs Ready to Go by January 2nd* (Oct. 28, 2010).

rule on December 23, 2010, to partially disapprove Texas's permitting program and authorize EPA to issue permits with respect to greenhouse gases.³⁷

The Upton-Inhofe bill would eliminate this requirement that large new or modified sources of greenhouse gases take, or even consider, any steps to minimize the pollution they will add to the atmosphere.

B. Impact on the NSPS Program

In December 2010, EPA announced a schedule to establish New Source Performance Standards (NSPS) for greenhouse gases for two categories of sources – fossil fuel-fired power plants and refineries – pursuant to two proposed settlement agreements. Under the agreements, EPA will propose standards for utilities and refineries in July 2011 and December 2011 and will finalize the standards in May 2012 and November 2012, respectively.³⁸

Under an NSPS, EPA establishes performance standards for new facilities (and modified facilities that significantly increase emissions) reflecting best demonstrated technology taking costs into account.³⁹ In practice, these standards are generally less stringent than limits based on best available control technology. In addition, states must submit plans to EPA to reduce emissions at existing facilities.⁴⁰ Under these provisions, states have the flexibility to apply less stringent standards or longer compliance schedules for various reasons including costs, remaining useful life of the facility, and physical impossibility.

EPA is in the process of conducting five listening sessions to give stakeholders extensive opportunities to provide their views to the agency even prior to any NSPS proposal.⁴¹ Nothing in EPA's history of issuing NSPS or its approach to date on greenhouse gases suggests that the agency plans to establish costly or onerous requirements for new sources under these provisions.

³⁷ U.S. Environmental Protection Agency, *Clean Air Act Permitting for Greenhouse Gas Emissions- Final Rules Fact Sheet* (online at: <http://www.epa.gov/nsr/ghgdocs/20101223factsheet.pdf>).

³⁸ U.S. Environmental Protection Agency, *Settlement Agreements To Address Greenhouse Gas Emissions From Electric Generating Units and Refineries, Fact Sheet* (online at: www.epa.gov/airquality/pdfs/settlementfactsheet.pdf).

³⁹ CAA section 111.

⁴⁰ CAA section 111(d).

⁴¹ U.S. Environmental Protection Agency, *Listening Sessions on Greenhouse Gas Standards for Fossil Fuel Fired Power Plants and Petroleum Refineries, Webpage*, (online at <http://www.epa.gov/airquality/listen.html>).

The Upton-Inhofe bill would eliminate this EPA authority to set minimum emissions standards for large fossil-fuel fired power plants and oil refineries, which are the first and second largest stationary sources of greenhouse gases respectively.

IV. Upton-Inhofe Prohibits EPA and California from Establishing New Tailpipe Standards

The Upton-Inhofe bill changes the manner in which motor vehicles have been regulated in the United States for 40 years. The Clean Air Act authorizes two sets of standards to control tailpipe pollution from motor vehicles: (1) federal standards and (2) state standards established by California, which can also be adopted by other states. The Upton-Inhofe bill would terminate both federal and state authority to establish tailpipe standards for greenhouse gases after vehicle model year 2016.

A. Impact on EPA Authority

New section 330(b)(2)(A) prevents “further revision” of the 2010 greenhouse gas tailpipe standards. Those standards apply to vehicle model years 2012 to 2016. This national program for fuel economy and greenhouse gas emissions was supported by the automobile industry, the states, and environmental advocacy groups.⁴² If the Upton-Inhofe bill is enacted, there will be no federal greenhouse gas tailpipe standards for cars and trucks after model year 2016.

EPA and the National Highway Traffic Safety Administration have recently evaluated scenarios representing 3%, 4%, 5%, and 6% annual increases in overall average stringency in tailpipe standards after model year 2016. These scenarios are roughly equivalent to 47 to 62 mpg in 2025, if all improvements were made using fuel economy-improving technology.⁴³ Under the Upton-Inhofe bill, EPA would lose its authority to adopt standards that promote these technologies.

NHTSA, acting alone, is highly unlikely to achieve comparable levels of oil savings and emissions reductions. Of the benefits achieved by the 2012 to 2016 national standards, fully one-quarter of the fuel savings and one-third of the greenhouse gas emissions reductions are produced solely by the EPA tailpipe standards.⁴⁴ These

⁴² See U.S. Environmental Protection Agency, U.S. Department of Transportation, National Highway Traffic Safety Administration, *Light-Duty Vehicle Greenhouse Gas Emissions Standards and Corporate Average Fuel Economy Standards; Final Rule*, 75 Fed. Reg. 25324 (May 7, 2010).

⁴³ U.S. Environmental Protection Agency and U.S. National Highway Traffic Safety Administration, *Interim Joint Technical Assessment Report* (Oct. 2010) (online at <http://www.epa.gov/otaq/climate/regulations/420f10051.htm>).

⁴⁴ See U.S. Environmental Protection Agency, U.S. Department of Transportation, National Highway Traffic Safety Administration, *Light-Duty Vehicle Greenhouse Gas Emissions Standards and Corporate Average Fuel Economy Standards; Final Rule*, 75 Fed. Reg. 25324, 25343-4, 25347 (May 7, 2010).

differences stem in large part from differences in the underlying statutory authorities of the two agencies. For example, some manufacturers have routinely paid civil penalties rather than complying with NHTSA fuel economy requirements, while this option is not available as a practical matter under the Clean Air Act.

B. Impact on California Authority

Section 209(b) of the Clean Air Act requires EPA to waive federal preemption for California motor vehicle standards if the agency determines that California's standards in the aggregate will be at least as protective of public health and welfare as federal standards. It also provides that other states have the option of electing to apply California's standards. In practice, this has allowed California to set vehicle standards that are more protective of public health than the federal standard and has allowed other states to follow California's example. However, section 3 of the Upton-Inhofe bill strips the EPA of authority to waive federal preemption, thereby blocking any state tailpipe standards for greenhouse gases for model years 2017 or later.

V. Upton-Inhofe Prohibits EPA from Establishing Standards for Other Mobile Sources

The Upton-Inhofe bill bars EPA from using its existing authority under Title II of the Clean Air Act to establish greenhouse gas emissions standards for other mobile sources such as planes, trains, boats, and heavy construction equipment.⁴⁵ NHTSA does not have authority to establish efficiency standards for these sources, which consume over 2 million barrels of oil per day.⁴⁶ Under the Upton-Inhofe bill, the potential for substantial oil savings and greenhouse gas emissions reductions from these sources would be forfeited.

VI. Upton-Inhofe Prohibits EPA from Enforcing Greenhouse Gas Reporting Requirements

Congress included provisions in the Clean Air Act Amendments of 1990 that required power plants to report carbon dioxide emissions.⁴⁷ In 2007, Congress extended this reporting requirement to apply to other large sources, as well as other greenhouse

⁴⁵ See CAA sections 213, 231.

⁴⁶ See U.S. Energy Information Administration, *Annual Energy Outlook 2011* (online at: <http://www.eia.doe.gov/oiaf/aeo/tablebrowser/#release=AEO2011&subject=0-AEO2011&table=45-AEO2011®ion=0-0&cases=ref2011-d120810c>).

⁴⁷ Clean Air Act Amendments of 1990, section 821 (Public Law 101-549).

gases, and EPA issued implementing regulations in 2009.⁴⁸ New section 330(b)(4)(A), however, would overturn the recently adopted greenhouse gas reporting requirements for all sources. Power plants would be the only sources subject to any reporting requirements, and they would not have to report greenhouse gas emissions other than carbon dioxide.

In addition, EPA prepares the inventory of U.S. greenhouse gas emissions, which is submitted by the United States pursuant to its treaty obligations under the U.N. Framework Convention on Climate Change. Section 330(b)(1) may prevent EPA from conducting this technical work and thus could impair the United States' ability to carry out its obligations under this international treaty, which was signed by President George H. W. Bush and ratified by the U.S. Senate.

VII. Upton-Inhofe Undermines EPA Programs Related to Substitutes for Ozone-Depleting Chemicals

Under section 612 of the Clean Air Act, companies that wish to market a new substitute for ozone depleting substances must apply to EPA for approval. In determining whether to approve a substitute, EPA compares the overall risk to human health and the environment posed by the original substance with that of the potential substitute. The global warming potential of a substitute can be a significant factor in this analysis. In fact, a number of U.S. companies, including Dupont, Honeywell, and GE, have expended significant resources developing substitutes with very low global warming potential.

New section 330(b)(1) would block EPA from considering global warming impacts when approving substitutes. While section 330(b)(2)(D) excepts implementation and enforcement of Title VI, that exception applies only to the extent that the implementation or enforcement only involves class I or class II substances (i.e., ozone depleting substances). However, recently approved and pending substitutes are not class I or class II substances. As a result, EPA would appear to be unable to consider climate change effects in deciding whether to approve applications for substitutes.

There are other ways in which the Upton-Inhofe bill interferes with the ozone-depletion provisions of the Clean Air Act. For the last two years, the United States, in partnership with Canada and Mexico, has advocated for an amendment to the Montreal Protocol that would control the global production of HFCs, which are substitutes for ozone-depleting chemicals that have high global warming potentials. HFCs are not class I or class II substances. New section 330(b)(1) would prevent EPA from implementing such a treaty amendment through the Clean Air Act. As a result, it would undermine the Administration's ability to pursue established treaty negotiating positions that dozens of countries now support.

⁴⁸ Consolidated Appropriations Act, 2008 (H.R. 2764; Public Law 110-161); U.S. Environmental Protection Agency, *Mandatory Reporting of Greenhouse Gases; Final Rule*, 74 Fed. Reg. 56260 (Oct. 30, 2009).

VIII. Upton-Inhofe Creates Legal Uncertainty for the 2010 Motor Vehicle Standards

A summary of the Upton-Inhofe bill issued by the majority Committee staff states that the Act would allow EPA to implement the light-duty vehicle tailpipe standards for 2012-2016.⁴⁹ However, the language of the Upton-Inhofe bill may not effectuate this stated goal.

As discussed above, section 330(d)(4)(B) repeals the endangerment finding. An endangerment finding is an essential precondition for light-duty tailpipe standards under section 202(a) of the Clean Air Act. Section 330(b)(2)(A) states that notwithstanding the repeal of the endangerment finding, section 330(b)(1) does not prohibit EPA from implementing and enforcing the light-duty vehicle tailpipe standards adopted in May 2010. But the bill does nothing to satisfy or remove the independent legal requirement for an endangerment finding under section 202(a). In response to questions, majority counsel stated that the light-duty vehicle tailpipe standards are not affected by this bill because the bill codifies that rule. There is, however, no language in the bill that has the legal effect of codifying the light-duty tailpipe standards rule. Therefore, repeal of the endangerment finding will provide opponents of the light-duty vehicle greenhouse gas rule a new legal argument that the rules are unlawful.

IX. Upton-Inhofe Calls Voluntary Programs into Question

It is unclear whether the Upton-Inhofe bill preserves EPA's authority under the Clean Air Act to implement many voluntary programs to reduce greenhouse gases. Clean Air Act section 103 is a primary authority for many of these programs. While section 330(b)(2)(C) excepts "research, development and demonstration programs" from the prohibition in section 330(b)(1), this language is narrower than the language in section 103 of the Clean Air Act, which authorizes "nonregulatory strategies." Thus, it is unclear whether the language of the exception encompasses voluntary programs. Moreover, EPA could be blocked from relying on section 103, which authorizes EPA activities with respect to "air pollution" and "air pollutants," as authority for these voluntary programs because new section 330(b)(1)(B) excludes greenhouse gases from the definition of "air pollutant." These provisions in the Upton-Inhofe bill call into question many successful voluntary programs, such as EPA's SmartWay program, which works with the trucking industry to reduce emissions, or EPA's participation in the Global Methane Initiative, an international effort to implement methane emissions reduction projects and technologies.

X. Upton-Inhofe Creates Litigation Opportunities for Opponents of Regulation of Conventional Pollutants

⁴⁹ Energy and Commerce Committee Staff, *Subcommittee Markup of H.R. 910, the Energy Tax Prevention Act of 2011* (internal memorandum) (Mar. 8, 2011).

The Upton-Inhofe bill appears to create numerous new litigation opportunities over the regulation of conventional air pollutants due to legal ambiguities created by drafting peculiarities. For instance, although ozone is regulated for its conventional impacts on public health and welfare, it is also greenhouse gas. Under the Bush Administration, EPA considered the climate effects of ozone when establishing a national ambient air quality standard for ozone.⁵⁰ Similarly, implementation of the existing landfill gas regulations, which encompass methane and other gases, might be barred as those regulations were justified at least in part based on climate change. It is unclear what impact the Upton-Inhofe bill would have on many clean air actions that address conventional air pollutants like ozone and landfill gas that also have climate change impacts.

XI. Amendments to H.R. 910

On March 15, 2011, a number of amendments to H.R. 910 were considered by the full Committee. Three amendments sought to recognize and accept the scientific underpinning of EPA's endangerment finding. Each amendment was rejected on a party-line vote with all Democratic members supporting the amendment and all Republican members opposing the amendment.

First, Rep. Waxman offered an amendment that would have put the Committee on record accepting what decades of data has demonstrated – that the planet is warming. The amendment read as follows:

At the end of the bill, add the following new section:

SEC. 4. CONGRESSIONAL ACCEPTANCE OF THE SCIENTIFIC FINDINGS OF THE ENVIRONMENTAL PROTECTION AGENCY.

Congress accepts the scientific finding of the Environmental Protection Agency that “Warming of the climate system is unequivocal, as is now evident from observations of increases in global average air and ocean temperatures, widespread melting of snow and ice, and rising global average sea level.”.

Second, Rep. DeGette offered an amendment that would have put the Committee on record accepting the scientific consensus that climate change is caused by human greenhouse gas emissions. The amendment read as follows:

At the end of the bill, add the following new section:

⁵⁰ EPA, Air Quality Criteria for Ozone and Related Photochemical Oxidants, Vol. I (Feb. 2006).

SEC. 4. CONGRESSIONAL ACCEPTANCE OF THE SCIENTIFIC FINDINGS OF THE ENVIRONMENTAL PROTECTION AGENCY.

Congress accepts the scientific finding of the Environmental Protection Agency that the “scientific evidence is compelling” that elevated concentrations of greenhouse gases resulting from anthropogenic emissions “are the root cause of recently observed climate change”.

Third, Rep. Inslee offered an amendment that would have put the Committee on record accepting the scientific finding that public health is threatened by climate change. The amendment read as follows:

At the end of the bill, add the following new section:

SEC. 4. CONGRESSIONAL ACCEPTANCE OF THE SCIENTIFIC FINDINGS OF THE ENVIRONMENTAL PROTECTION AGENCY.

Congress accepts the scientific finding of the Environmental Protection Agency that “the public health of current generations is endangered and that the threat to public health for both current and future generations will likely mount over time as greenhouse gases continue to accumulate in the atmosphere and result in ever greater rates of climate change”.

Henry C. Wapner

Billy J. Ruck

Donna G. Zshoo

Doris O. Matsui

Frank Pallone Jr.

Mike Doyle

Edward J. Markey

Diana DeGette

Joe Manchin

Johnny Baldwin

Joe Schally

Ken Whistler

Eliot L. Engel

Joe Andree

Louis Capps

Paul H. Galt

Edwards

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